IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.4880/2007.

Basant Balecha
Vs.
Yashwant Singh

Date of Order : 20/9/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Ashok Kumar Shahdadpuri for the petitioner.
Shri J.P. Goyal for the respondent.

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BY THE COURT:-

Heard learned counsel for the parties.

The petitioner has challenged the order dated 21/4/2007 passed by the learned Additional District Judge No.4, Kota under which the appeal preferred by the plaintiff-respondent against the order dated 25/11/2005 passed by the learned Civil Judge (Jr.Div.) & Judicial Magistrate (North) No.1 Kota was allowed and that order was set-aside.

The plaintiff-respondent filed a suit for ejectment against the petitioner-defendant for eviction from the suit premises on the ground of default before the trial court. The trial court

passed the order of provisional determination of rent dated 7/2/2001 and total arrears of rent for a sum of Rs.34425/- was determined apart from rent for Rs.600/- per month with a direction to petitioner-defendant to make payment of the said monthly rent by 15th of every succeeding month. When the petitioner made default in payment of the same, the plaintiff-respondent filed an application before the trial court on 9/7/2004 with a prayer that defence of the defendant-petitioner in terms of Sections 13(4) and (5) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 be struck out for committing second default in making payment of the arrears of the rent. The application was allowed by the court vide order dated 25/11/2005. That order however was reversed by the appellate court on 21/4/2007 in appeal filed by the respondents under Section Section 22 of the said Act which is impugned in the present petition.

Learned counsel for the petitioner has argued that though the amount was deposited with delay but the same has now been withdrawn by the plaintiff-respondent therefore, the default if any

stood condoned. It was argued that on account of personal difficulty of the petitioner, he could not make payment of the provisionally determined rent which act on his part was inadvertent.

Shri J.P. Goyal, learned counsel for the respondent has opposed the writ petition and placed reliance on the judgment of the Supreme Court in **Nasiruddin and others Vs. Sita Ram Agarwal : (2003) 2 SCC 577** and on the basis of that judgment, he argued that there was no escape for the trial court but to strike out the defence and the trial court has committed an error of law in rejecting the application of the plaintiff on the premise that burden to prove default lay on the landlord and not on the tenant.

Learned counsel for the petitioner has submitted with this writ petition a complete chart showing the deposits of rent made by him from time to time. A perusal of the abovesaid chart clearly indicates that petitioner has been making intermittent deposits of the rent but he has committed default in the sense that amount of rent has not been deposited on due dates. The learned

first appellate court has analysed the factual aspect as per the details furnished by the petitioner himself.

I do not find that the learned first appellate court has committed any such illegality which may be described as an error apparent on the face of the record so as to justify interference by this Court.

Hence, the writ petition is dismissed.

(MOHAMMAD RAFIQ), J.

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